

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR  
WARMING PRODUCT LIABILITY  
LITIGATION

MDL No.: 15-md-02666 (JNE/DTS)

This Document Relates To:

DENNIS BARKER,

Civil Action No.: 17-cv-03806

Plaintiff,

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**DECLARATION OF SAMANTHA RODRIGUEZ IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

I, Samantha Rodriguez, declare as follows:

1. I am an attorney at Kennedy Hodges, LLP and Counsel for Plaintiff Dennis Barker in the above-captioned matter.
2. I submit this declaration in opposition to Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1740] filed on February 7, 2019.
3. Attached as Exhibit A are true and correct copies of the Leslie Barker's Declaration in Support of Plaintiff's Response in opposition to Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1740].
4. Attached as Exhibit B are true and correct copies of Letters Testamentary issued by the Harris County Probate Court appointing Leslie A. Barker as the Independent Executrix of the estate of Plaintiff Dennis Barker.

5. Mr. Barker contacted Kennedy Hodges, LLP in August of 2015 regarding injuries that were allegedly caused by the Bair Hugger patient warming device.
6. Medical records and billing records pertaining to Mr. Barker's treatment were obtained by Kennedy Hodges through its third-party medical records retrieval company. Those records indicated that a Bair Hugger device was used during his initial orthopedic surgery.
7. This case was filed on August 17, 2017 to comply with a possible statute of limitations deadline identified by counsel.
8. A PFS was submitted to the Court on November 15, 2017. Defendants issued a deficiency notice on December 13, 2018 for an incomplete verification. Plaintiff submitted an amended PFS on January 2, 2018. Defendants issued another deficiency for incomplete personal information, and Plaintiff submitted another amended PFS on February 20, 2018. On March 19, 2018, Defendants issued a deficiency notice for an incomplete verification, and Plaintiff submitted a signed verification on April 27, 2018. During the course of completing the PFS, Plaintiff gave every indication that he wanted to continue the case. Defendants did not issue any further Deficiency Notices regarding this PFS.
9. Counsel had been in close contact with Plaintiff until a few months before his passing.
10. On February 5, 2019, counsel received an email from Defendants stating that Mr. Barker had passed away on September 14, 2018. Counsel was not aware of Mr. Barker's passing prior to receipt of this email.

11. Counsel placed a phone call to Plaintiff's spouse in order to reach next of kin. Mrs.

Leslie Barker. Mrs. Barker informed Counsel that she was vaguely aware of her husband's pending lawsuit and did not know any information as to the name of the firm representing him, the defendants, or case number.

12. Plaintiff's spouse provided Plaintiff's Counsel with the appropriate probate paperwork to continue her spouse's case on February 11, 2019, and has expressed an interest in pursuing her husband's case.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

February 14, 2019

/s/Samantha Rodriguez  
Samantha Rodriguez